



September 22, 1999

Mr. Bernardo J. Garcia  
Senior Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR99-2659

Dear Mr. Garcia:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127544.

The Harris County Rabies/Animal Control Office (the “county”) received a written request for “a records computer search report of all of the dog bite cases for the period of 5-15-99 – 6-15-99.” You have submitted to this office as responsive to the request the print-out of one computer file as being representative of the requested information.<sup>1</sup> You contend the requested information is excepted from required public disclosure pursuant to the informer’s privilege, as incorporated into section 552.101 of the Government Code, and section 552.108 of the Government Code.

Citing Open Records Letter Nos. 99-0686 (1999), 97-2492 (1997), and 97-2166 (1997) as authority, you contend that the identities of all individuals who report dog bites to the county may be withheld from the public pursuant to the informer’s privilege. The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1982), 279 (1981); *see also* Open Records Decision No. 208 (1978).

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note, however, that because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). We cannot determine from the document you submitted to this office whether the "complainant" identified on line 2 of the computer print-out is the victim of the dog bite or some other disinterested individual. Nor have you informed this office as to whether the county normally informs the dog owner of the identity of the bite victim. Given the limited facts before us, we can only generally conclude that the county may withhold the identity of the "complainant" pursuant to the informer's privilege in those instances where the county did not release the name of the "complainant" to the dog owner.

You also contend that the remaining information contained in the representative sample is excepted from public disclosure pursuant to section 552.108(a)(2), which excepts from required public disclosure "information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did not result* in conviction or deferred adjudication."<sup>2</sup> (Emphasis added.) This exception applies to records pertaining to *criminal* investigations and prosecutions that have concluded and did not result in a conviction or deferred adjudication.

Although section 552.108 generally applies to records of a law-enforcement agency or prosecutor, in certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. *See* Open Records Decision No. 493 (1988). This office has determined that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or already has reported to the appropriate law-enforcement agency, section 552.108 will apply to the information gathered by the administrative agency if its release would interfere with law enforcement. *Id.*

We decline, however, to extend the protection of section 552.108 to matters that involve the civil enforcement of the county's animal control laws. *See* Open Records Decision Nos. 434 at 2 (1986), 287 at 2 (1981) (whether information falls within "law-enforcement exception" must be determined on a case-by-case basis). We conclude, therefore, that the county may withhold the remaining information at issue pursuant to section 552.108(a)(2) only to the extent that 1) the requested records in fact were referred to the Harris County District Attorney's Office for prosecution, *and* 2) such prosecution did not result in a conviction or deferred adjudication. Any records not referred to the district attorney must be released to the requestor, except as discussed above.

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<sup>2</sup>It is not clear from your brief whether you intended to raise section 552.108(a)(2) for all responsive records held by the county. However, because you have raised no other provision of section 552.108, we will assume for purposes of this ruling that such is the case.

With regard to those records referred to the district attorney, please note that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other applicable exception to disclosure, the county must release the "basic information" contained in the computer print-outs in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), including information about the complainant (unless protected by the informer's privilege as discussed above), the attacking dog, and the dog's owner. We have marked on the representative sample the types of information the county must release from records referred to the district attorney. All remaining information may be withheld from those types of records pursuant to section 552.108(a)(2) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/nc

Ref.: ID# 127544

Encl. Submitted documents

cc: Mr. Andrew L. Payne  
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(w/o enclosures)